

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 07-CV-02067(NGG)

-against-

: United States Courthouse
: Brooklyn, New York

CITY OF NEW YORK, ET AL.,

: Thursday, September 15, 2016
: 2:00 p.m.

Defendants.

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TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the
United States of America:

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1 (In open court.)

2 THE COURT: Be seated in the back and let's have
3 appearances in the front.

4 MS. SWEDISH: Good afternoon, Your Honor. Jennifer
5 Swedish for the plaintiff, United States.

6 THE COURT: Keep your voices up, please.

7 MR. SEXTON: Richard Sexton for the United States.

8 MS. FUNK: Hillary Funk for the United States.

9 MR. SCHACHNER: Elliot Schachner for the United
10 States.

11 MR. WASHINGTON: Paul Washington, Vulcan Society.

12 MR. BAYLOR: Khalid Baylor, Vulcan Society.

13 MS. WILSON: Regina Wilson, Vulcan Society.

14 MR. CHARNEY: Darius Charney for the plaintiff
15 intervenors.

16 MS. LOSSIA: Dana Lossia for the plaintiff
17 intervenors.

18 MS. COOK-MACK: Rebekah Cook-Mack for the plaintiff
19 intervenors.

20 MR. LEVY: Richard Levy for the plaintiff
21 intervenors. Good afternoon.

22 THE COURT: Good afternoon.

23 MR. EICHENHOLTZ: Eric Eichenholtz for the City of
24 New York.

25 MR. SULLIVAN: Good afternoon, Your Honor. Donald

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1 Sullivan for the City of New York.

2 MR. RUBINSTEIN: Good afternoon. Yuval Rubinstein
3 for the City of New York.

4 MS. BROWN: Terryll Brown for the Fire Department.

5 MR. RHODES: Sean Renaghan for the City of New York.
6 Good afternoon, Your Honor.

7 THE COURT: Good afternoon.

8 And in the back.

9 MR. COHEN: Good afternoon, Your Honor. Mark Cohen
10 court monitor.

11 MS. WALD: Alexandra Wald, court monitor.

12 MR. JACKSON: Christopher Jackson, court monitor.

13 MR. DICK: Gale Dixon, court monitor.

14 THE COURT: All right, please be seated, everybody.

15 MR. EICHENHOLTZ: Thank you.

16 THE COURT: Good afternoon. This is our periodic
17 get-together to see how we are doing in the implementation
18 process on the remedial order and the disparate treatment
19 settlement.

20 So I think that what we need to do, a lot is going
21 on, and who would like to lead off with the discussion of what
22 is happening in terms of the preparation for the next
23 examination and the expressions-of-interest issue.

24 MR. EICHENHOLTZ: Yes, Your Honor.

25 So earlier this year the Fire Department began its

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1 recruitment campaign. Your Honor, unlike previous recruitment
2 campaigns, the Fire Department, and I think we've mentioned
3 this at previous conferences, has hired a series of experts,
4 both media experts to help the Fire Department with social
5 media and with ad campaigns, as well as experts to develop a
6 very comprehensive and robust database that's capturing a lot
7 more information about potential candidates and
8 expressions-of-interest than previous campaigns.

9 The campaign has kicked off and I will just give
10 Your Honor a brief sort of summary of the things that have
11 happened.

12 Most recently, the joint FDNY website, which was
13 developed by the Fire Department's consultants, went live.
14 There have been some social media and outreach efforts. There
15 have been updated fliers and posters that have been created.
16 And the Fire Department's expert is currently in the process
17 of identifying locations for outdoor advertising.

18 Earlier than the website, Your Honor, the
19 traditional, more traditional field campaign was launched.
20 The Fire Department has 850 recruiters, did about 828 events
21 in August, has been sending out street teams. They did 44
22 street teams so far, and this is a program that, in
23 particular, the Vulcan Society believes has substantial impact
24 in collecting and driving up interest. So the Fire Department
25 will be doing more reporting to the parties about the street

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1 teams in the monthly report.

2 And what is now fully up and functional is this ARCS
3 database, which collects data. And I think, most
4 interestingly, Your Honor, will be used to track candidates
5 start to finish. And, in particular, what the Fire Department
6 will do as this campaign continues is really be able to
7 isolate the candidates that are extremely interested, somewhat
8 interested, not interested, obviously, and focus its efforts
9 on that middle ground to make sure that we are getting those
10 interests driven up. And also to make sure that we are
11 focused on the candidates who are most likely to become
12 firefighters.

13 Your Honor, this is where I think the parties have a
14 bit of a divergence at the moment. Leading up to the
15 campaign, the Vulcan Society -- as Your Honor knows in the
16 disparate treatment settlement, the City had agreed with the
17 Vulcan Society to certain percentage goals, working age
18 population plus 3 percent to recruit test-takers. And using
19 data from the old campaign, the Vulcan Society in the City was
20 able to confirm the correctness of that data with respect to
21 the data we had in the past campaign, that, you know, this is
22 how the past campaign worked. We had X number of people. We
23 had, you know, an EOI, expression-of-interest. And we had X
24 number of people sign up for the test, X number of people take
25 the test, and sort of broke that out and tied it in with the

1 percentages.

2 The City's always been a little concerned about that
3 because it focuses entirely on the quantity, the amount of
4 EOIs you're getting, as well as quality. What we've
5 discovered as we've been really diving into this issue is it
6 has become particularly difficult because the old data had a
7 bunch of problems, simply because we didn't have the capacity
8 we have now. So EOIs were on paper, they'd be entered into a
9 database. If you were a 50-year-old who went to five
10 different events, you'd count as five people in that EOI
11 number. So there were duplicates. There were people that
12 weren't qualified to be firefighters. There were even people
13 who really wanted EMS, but were filling out a Fire Department
14 EOI and the Department didn't really have any way to
15 distinguish these things in their numbers.

16 Using our current technological capacity, obviously,
17 that is a lot easier to do and a lot easier to isolate. So as
18 the Fire Department was reporting the recruitment numbers from
19 the field campaign, the parties and the monitor began becoming
20 concerned because the number of EOIs they were seeing were
21 significantly less than the EOIs that were in this goals
22 document if you backtrack it to how the company went.

23 Over time we looked into this at their request, and
24 ultimately that's what we found is we weren't really doing an
25 apples-to-apples comparison.

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1 The other issue, Your Honor, is that the Fire
2 Department, and I think everyone's consensus was we did not
3 just want to replicate last campaign. Because while there
4 were some good things about that campaign, there were things
5 we wanted to try to be better at and more effective. So
6 there's been a focus, not just on the quantity in duplicating
7 the numbers from last campaign, but also this idea of are we
8 maximizing the Fire Department's ability to get individuals
9 who can come in, who will take the test, who will get through
10 the processes and become firefighters. Because if we can
11 collect a large number of African-American EOIs, that doesn't
12 mean much if there is tremendous attrition and they get to the
13 test and they are not getting through the process.

14 So we have been focusing on both, and what we're in
15 the process of doing with the monitor and the parties right
16 now is really kind of showing them those changes, how they
17 impact the numbers, and really trying to give the parties a
18 better understanding of the Department's view on this going
19 forward.

20 I will just say, Your Honor, from the Fire
21 Department's perspective, the Fire Department does believe
22 it's on track to meet the goals. And the Fire Department
23 believes that the campaign that's currently being undergone is
24 and will continue to be a more effective campaign than the
25 previous one.

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1 With all that being said, we are continuing to talk
2 with the parties because we know this is a very large concern
3 to the parties, both to explain the differences in the numbers
4 and to determine, as the monitor is going to work with the
5 parties, to hopefully get us all on the same page on issues
6 like:

7 Is the Fire Department utilizing all of its internal
8 resources? Is it using all the recruiters it has available to
9 it from the firefighting force? Are there firefighter
10 recruiters that are not being utilized or being under
11 utilized?

12 The Fire Department says no. The other parties say
13 otherwise. And we are going to be working with the monitor
14 over the coming weeks actually, I wouldn't even say months,
15 weeks, to reconcile that and, hopefully, all get on the same
16 page. And the monitor is going to work with us to sort of get
17 down to, you know, where we actually are and what sort of
18 action plan needs to be done.

19 The parties and the monitor have also requested that
20 the Fire Department have contingency plans if it determines
21 that it's falling significantly behind its EOI goals. The
22 department does and will continue to have those plans. There
23 are ways to get a large number of interest to reach a large
24 group of our targeted audiences in ways that we think brings
25 back a great deal of quantity, but not necessarily quality.

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1 If we need to do it, we can do it.

2 Judge, the Department, both the Fire Department,
3 itself, as well as the experts it's working with, are all of
4 the opinion that that is not necessary at this time, but that
5 is also something we intend to discuss with the monitor and
6 the parties.

7 I would also mention, Your Honor, that with respect
8 to recruitment, the Department gives weekly reports to the
9 parties and to the monitor. The Fire Department regularly
10 reports to the monitor and meets with the parties and the
11 monitor together on a monthly basis. So we've been having
12 monthly recruitment meetings. Our next one is next Tuesday,
13 September 20th. So we believe not only are we in good shape,
14 but we really think that we are in a position where,
15 hopefully, at the next meeting and moving forward we will be
16 to be able to quickly resolve some of the outstanding concerns
17 that some of the parties have expressed regarding the
18 recruitment campaign.

19 THE COURT: Is there agreement about the baseline in
20 determining what the 3 percent is?

21 MR. EICHENHOLTZ: Yes. So the percentages,
22 themselves, we have agreement on. And we also agree on what
23 the numbers from the last campaign showed us. What we don't
24 really have agreement on, Your Honor, is how you view the
25 quantity of EOIs in connection with are we being successful in

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1 the campaign. And the Department has some different
2 viewpoints. And we never really had discussions about how we
3 were going to analyze it, so the biggest thing that needs to
4 be done, and I give the Department of Justice credit for this,
5 they suggested it, is given the new numbers and analytics that
6 the Fire Department is using, can we come up with ratios of
7 EOIs to test-takers that we're all comfortable with, that we
8 think this is what the new campaign will show, the new
9 successful benchmarks.

10 The other thing we're trying to do, but because the
11 data is just coming in we can't do this in the way we will,
12 say, for the next campaign, is really starting to get
13 databased measurements for, like I said, levels of interest.
14 Who really wants to be a firefighter, who kind of does, so we
15 can really be targeted and know at the EOI stage or just
16 beyond who we kind of have in the bank, so to speak, and who
17 we really need to work on. And the Fire Department is trying
18 to get that sort of analysis done sooner rather than later.
19 The problem is the old data from the last campaign isn't good
20 enough for us to be able to develop that kind of model. So
21 they're working on the data that they have and they're hoping
22 in relatively short order they will have enough confidence
23 that they can start using that. And that is going to help
24 because it's really going to help illustrate, I think, for the
25 parties, what the Fire Department is seeing and who they're

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1 targeting and who they're getting back and whether we really
2 think we've got a group of people who are not only going to be
3 taking the test or signing up for the test, but are really
4 going to make it all the way through the test and all the way
5 through the process.

6 So that is a big thing the Fire Department really
7 wants to show the parties and, like I've said this to the
8 parties, I'll say it to the Court, I think Your Honor's point,
9 I think while those numbers were agreed to, I think their
10 meaning and their implication were never really hashed out.
11 And that's really the big lift that we have to do over the
12 next couple of months, is to show the parties what we're
13 looking at, get their comments, and really hopefully all be on
14 the same page on that issue moving forward.

15 THE COURT: And in terms of the outreach, there must
16 be areas of outreach or events or communities within the
17 minority community or communities, there are many minority
18 communities in New York City, where you are getting
19 expressions-of-interest from a larger percentage of
20 individuals who have the promise of preparing and taking the
21 test and going through the whole process.

22 Have your consultants been examining that in the
23 ongoing project as opposed to what happened in prior years?

24 MR. EICHENHOLTZ: Yes, Your Honor. And that's the
25 sort of thing I'm talking about. The problem with that is you

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1 really can't -- you can't get a reliable focus on that until
2 you get some data. So as we go further along in the campaign,
3 the ability to do that is growing.

4 And the next step, really, we think from the
5 Department's perspective is to be able to get that in, you
6 know, together in a significant enough way that it is going to
7 be meaningful and understandable to the parties and to the
8 monitor, and that the Department has enough confidence based
9 on the data it already has that this is what we're doing well,
10 these are the sorts of events that are really working well.
11 All of those things.

12 We know that with the raw numbers already and we've
13 had discussions about that with the raw numbers, but we're
14 really trying to get deeper than just the raw numbers.
15 Because EOIs, again, expressions-of-interest, even with the
16 department being more discerning and no longer counting some
17 of these, you know, really unusable expressions-of-interest
18 because the person wouldn't even be qualified, for example,
19 doesn't tell the whole story. So we're really trying to work
20 on getting that in place as much as possible so that everyone
21 can have a meaningful conversation about what adjustments if,
22 any, need to happen in the recruitment campaign.

23 THE COURT: And so I take that you are consulting
24 with the plaintiffs on what you are learning along the way to
25 get their support in focusing on those areas, which may have

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1 greater promise?

2 MR. EICHENHOLTZ: Yes, Your Honor.

3 THE COURT: And I will want to hear from the
4 plaintiffs also on this.

5 MR. EICHENHOLTZ: Right. I would say that is
6 correct. We haven't done that as much as we want to moving
7 forward. And there are two things. One is sort of the things
8 I was just describing I think will enable us to have that
9 conversation because, quite frankly, we haven't really had the
10 ability to put some of these things in a written form that the
11 parties can, you know, digest and really be able to come in
12 with more comments. So it's a little more reactive at the
13 moment. We want to move past that.

14 We also really would like to move past the pure
15 focus on quantity. And I've spoken with the parties, I will
16 let them speak for themselves, as well as the monitor, I think
17 we're all committed to doing that, but I think really the onus
18 is on the Department at this point, Your Honor, to get that
19 done and to really -- I said we are going to start doing that
20 on Tuesday, but to really educate the parties and put them in
21 a position where they can really put in some comments on this
22 and help work with the Department on that.

23 THE COURT: I am going to turn to the other parties,
24 but I am also interested, and we can wait on an answer for
25 this until after I have heard from them, on contingency plans

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1 in the event that the numbers of likely candidates falls short
2 of the goals.

3 MR. EICHENHOLTZ: Yes, Your Honor.

4 THE COURT: And then what do we do?

5 MR. EICHENHOLTZ: Right.

6 THE COURT: Clearly, there are a lot of success
7 stories that we can point to with the minority community about
8 what has been done and the outcomes that have been positive,
9 but I think how this message gets across we may not be, you
10 may not be, they may not be achieving the kind of
11 understanding of these successes and how they might impact
12 future candidates.

13 So I would like to hear about that eventually as
14 well.

15 MR. EICHENHOLTZ: Yes, and I certainly will, Your
16 Honor.

17 The one thing I would say is that the other thing I
18 would just went through, part of what the experts did was they
19 had focus groups, including firefighters from, obviously,
20 under-represented groups, under-represented communities. So
21 that when the marketing campaign, the website, things like
22 that were developed, all of that input was taken into account.

23 And the other thing I just want to highlight is that
24 the recruitment staff, both Laura Kavanagh, who is the deputy
25 commissioner, and Nafeesah Noonan, who is now the director of

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1 recruitment, have ongoing dialogue with all of the interested
2 groups, including the Vulcan Society, on a regular basis so
3 that that perspective is being taken into consideration and,
4 really, they are listening. And, obviously, the Vulcan
5 Society as well is very involved on the ground recruiting as
6 well.

7 THE COURT: All right, let me hear from plaintiffs
8 about what I just heard from the City.

9 MR. LEVY: May I?

10 Just to state the obvious, which I guess you do
11 know, of course you do know, for the Vulcan Society
12 plaintiffs, the most important aspect of this case was to
13 increase the numbers of blacks in the Department. So we've
14 focused on this very carefully and critically, not necessarily
15 in a negative sense, but to look carefully at what's going on.

16 And I should say at the outset that we agree with
17 the monitor who has some misgivings and concerns about what
18 appear to be a falling behind in the recruitment numbers. We
19 are now already halfway through the recruitment period. It
20 was given a one-year lead time knowing that we needed a good
21 period of time to try and acquaint a population that really
22 isn't so well acquainted with the Fire Department and its
23 advantages and possibilities. So a year was allotted and the
24 applications will be due in April of 2017. So we don't have a
25 lot of time to go, which is why we have particular concern

1 right now.

2 What's happened is just recently the numbers that we
3 thought we had all agreed upon seem to have changed, as
4 explained by Eric. One of the problems that I want to
5 identify immediately, and I think he has highlighted it, is
6 that we don't really understand the basis for some of the
7 changes. For example, we know in a very general sense that
8 the City is saying that the 125,000 expressions-of-interest
9 that we would need to reach the right number of applicants and
10 then the right number of test-takers given expected
11 mitigation, that was a number that we had all agreed upon at
12 one point. Starting with, as you suggested earlier, we
13 started with a number of test-takers we need, which we thought
14 would be about 15,000 to result in the -- you know, that would
15 give us the 28 percent number that we were looking for based
16 on the intended settlement. And that we thought would
17 require, and we had agreed on these numbers, of roughly 25,000
18 applicants, and then we needed so many expressions-of-
19 interest.

20 Well, the number changed from 125,000 expressions-
21 of-interest, we call EOIs, to 120,000. And there's been some
22 explanation, but nothing to -- no data, no strong explanation
23 or indications of the numbers that allowed for that change.
24 But even if you take that change, the goal originally had been
25 55,000 by now. So if you reduce that goal by the 125

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1 reduction to 105 that the City says is appropriate in terms of
2 the whole number needed of expressions-of-interest, that is a
3 15 --

4 THE COURT: From 125 to --

5 MR. LEVY: 105.

6 THE COURT: Go ahead.

7 MR. LEVY: That's what the City said they'd
8 changed, so that results in a 15 percent reduction in that
9 goal. But the number that we last saw, and there may have
10 been a later number, but as of August 7th, the actual number,
11 which was roughly halfway through the period, was 25,000 EOIs
12 obtained. And if you reduced the target of 55,000 by 15
13 percent, you're at 46,000. Look, these numbers, I'm not
14 holding anybody to the exact numbers, but the point is even
15 using that reduction, the numbers were falling behind.

16 The other thing we're seeing is that the
17 productivity is not what we thought it would be. In other
18 words, they have an event and frequently 15 people, 12 -- 15
19 EOIs, 12 EOIs, emerge, where there was some idea that it was
20 going to be closer to 50, a number that we all used, both
21 sides used as a goal for events. So we're way behind on that.
22 I think we're way behind on the actual numbers of EOIs
23 obtained.

24 So the concern is that there is only six months to
25 go really, and we think, I mean unless the explanation is

1 extremely good, that we are quite behind.

2 Now, putting that aside for a moment, we are also
3 concerned about what happens in the next six months and what
4 was included in the numbers that they used so far? For
5 example, the monitor pointed out that if the original -- the
6 numbers of where we are now included any holdover numbers from
7 some earlier period, it's very likely that those EOIs are
8 less, will be less productive than later ones. And then
9 there's kind of a flip side too, which is if somebody signed
10 up with an EOI at the very beginning of this process, you
11 know, back in April of 2016, will they still be interested
12 when we come to the application period in 2017, April of 2017,
13 because maybe they went and got another job, maybe they moved
14 or did something else because this was so far in the future.
15 Which has always been an issue for the minority community
16 because they didn't plan their whole lives that that's where
17 they were going to go because that's the thing you really want
18 to be. So these are issues that concern us a great deal.

19 And the other thing I meant to mention was that at
20 these events a numbers of them have been unstaffed and very
21 unproductive, and so that hasn't worked well in some
22 instances.

23 I think from our standpoint understanding, and Eric
24 has offered to make that understanding clear and that will be
25 very helpful, but understanding why the numbers changed and

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1 how justifiable they are in terms of the claim that we've met
2 the goal, that's one thing as of this time, point in time, but
3 I think even more importantly is to understand what's going to
4 happen in the next six months to ensure that we reach the
5 ultimate targets and that those targets are valid in the sense
6 that they really will produce in the end of number of
7 test-takers we need.

8 And that brings me to this other question that I
9 think it's late in the game to first be talking about a
10 Plan B. We are only six months away from the application
11 period and there should have been a Plan B, I think even a
12 long time ago, because if there is one and you have to
13 implement it, there is not a lot of time to do that.

14 So I would urge that the promised contingency plan
15 that Eric acknowledges is maybe needed, I don't think we
16 should even talk about, Well, maybe it won't be needed. I
17 don't think that's a fruitful conversation. I think we
18 should, all of us should insist that that plan be made known
19 now and everybody get a chance to look at it and the monitor
20 be able to evaluate it, because the last thing we want at the
21 end of the day is to find out we didn't make our numbers and
22 the goals of this case, in many ways, will be undermined.

23 So I think those are really the main issues for us,
24 and I just can't emphasize enough the importance as among the
25 issues in this case of that particular issue.

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1 MS. FUNK: For the United States, thank you, Your
2 Honor.

3 We're just awaiting the City's explanation of the
4 data that was recently provided. We're looking forward to the
5 meetings next week and are hopeful that those will provide
6 further information, and we'll provide our feedback after we
7 get that.

8 THE COURT: I appreciate that.

9 One of the issues for me is if the quality of the
10 expressions-of-interest, in other words, the higher percentage
11 of those who express interest go forward and have strong
12 candidacies, then some of this concern might be dissipated.
13 But there is no way of knowing at this point, at least from
14 this vantage point, that that might be the case. So I think
15 it would be useful for you all to, along with the court
16 monitor, to identify certain enhancements or augmentation of
17 the outreach effort.

18 There are only so many people in our catchment area,
19 so to speak, but if there are other ways of reaching likely
20 candidates that are not part of the current template or plan,
21 then let's find them and do it. And I would seriously agree
22 with Mr. Levy that with six months to go, that does not leave
23 a lot of time to shift the focus. But I am not even
24 suggesting a shift of the focus, I am suggesting that there
25 are other things that might be done, in addition to everything

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1 that is being done. I just do not know what they are, and you
2 have experts who do recruitment for a living and they should
3 be in a position to say: Where are we not looking? Where are
4 the likely pockets of interest that we might not be reaching?
5 And to try to reach them.

6 So I just point that out. I do not have a
7 suggestion because it is not an area of my expertise, but I am
8 deeply concerned about it.

9 On that issue, on the issue of the Academy, how many
10 more classes do you anticipate being filled out of the current
11 list? In other words, how much time do we really have until
12 we have to have a new list?

13 MR. EICHENHOLTZ: Your Honor, it would be the, I
14 believe, December or January, I forget which. I believe it's
15 the December class, so December 2016 and then June of 2017.
16 In June of 2017 the current list expires, so we can't use it.

17 THE COURT: Right, that's it. Right, so we have to
18 have a new list.

19 MR. EICHENHOLTZ: Yes, Your Honor.

20 THE COURT: Well, the class of June '17 is the last
21 class.

22 MR. EICHENHOLTZ: Yes.

23 THE COURT: And the first class under the, I don't
24 know, Test 2100, if you will, whatever it is going to be
25 called. I do not know how they come up with these numbers --

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1 MR. EICHENHOLTZ: Nor do I.

2 THE COURT: -- but they have numbers. The earlier
3 number is higher, the later number is lower. There is
4 somebody over there. There must be like a wheel of fortune
5 over at the Department of Administrative City Services because
6 I do not get it.

7 But let's say it's Exam 2100, that first class would
8 be in December of 2017 --

9 MR. EICHENHOLTZ: Yes.

10 THE COURT: -- or --

11 MR. EICHENHOLTZ: Right, assuming everything works
12 out.

13 THE COURT: Yes, assuming everything works out or in
14 January of 2018.

15 MR. EICHENHOLTZ: Right.

16 THE COURT: But we certainly do not want any lag
17 time --

18 MR. EICHENHOLTZ: Right.

19 THE COURT: -- in replacing firefighters who have
20 retired --

21 MR. EICHENHOLTZ: Yes.

22 THE COURT: -- or are going to retire.

23 MR. EICHENHOLTZ: That's correct.

24 MS. SWEDISH: One point of clarification. I believe
25 when this list expires, the City plans to put in, at least,

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1 two promotional classes --

2 MR. EICHENHOLTZ: Oh, yes.

3 MS. SWEDISH: -- before the open competitive class.

4 MR. EICHENHOLTZ: That is true. So we are giving a
5 promotional exam, and I appreciate the --

6 THE COURT: That is a good point.

7 MR. EICHENHOLTZ: Yes. We are giving a promotional
8 exam this December, Your Honor, and I think DOJ is correct in
9 that we are going to, at least, one class -- definitely one,
10 at least two, will come from that promotional list. So that
11 is pulling out of the EMS pool. So there will be a lag on the
12 open competitive.

13 THE COURT: Right. The only problem with any delay
14 in the new test is that the expressions-of-interest that are
15 over a year old become stale. And even more stale than a year
16 than what Mr. Levy was describing where people who said they
17 were interested in April of 2016 and you go back to them in
18 April of 2017 and they may have jobs, they may have moved,
19 they may have a lot of stuff going on and some of the best
20 candidates may not be waiting around to take a test.

21 MR. EICHENHOLTZ: Your Honor, if I may. Actually,
22 that's one of the good things about the new system the Fire
23 Department has in place, the ARCS system. They can interact
24 with those candidates through e-mail, text, things like that
25 to keep them interested, keep them updated, keep them in the

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1 loop. So hopefully it won't be a situation, I agree with Your
2 Honor, no matter what, the time lag people will drop out of
3 the picture, but --

4 THE COURT: Also there will be new people coming in
5 who graduate from high school --

6 MR. EICHENHOLTZ: Right.

7 THE COURT: -- or finish junior college or whatever
8 they do who are thinking about career options, and so then you
9 have to go out and reach out to them.

10 MR. EICHENHOLTZ: Yes.

11 THE COURT: So that is additional work to get your
12 numbers to where they need to be.

13 So what I am saying is you need to have some, not
14 contingency plans, but additional forms of outreach that maybe
15 you have not implemented to augment what you already have
16 because it seems that there is a little lag here, and I worry
17 about the lag. And we don't want any delay, even if we do
18 have the promotional exam results for a couple of classes,
19 which are likely to provide pretty good minority
20 representation, we hope and expect.

21 So what I am saying is you all need to get together
22 about what else can be done beginning now to provide
23 additional outreach. So that is a charge to you collectively.

24 And is there anything else on this before I go on to
25 ARCS? Because I want to hear about what is going on with

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1 ARCS.

2 MR. LEVY: Just one thing.

3 And I think it would be very helpful if there was
4 clarification that there be a written report that all of us
5 can understand that explains the new set of numbers the City
6 is using because I don't think the monitor -- I mean I don't
7 want to speak for the monitor, but I don't think any of us are
8 clear.

9 I think the DOJ would join in seeing some support,
10 not an explanation alone, but support, maybe there is some
11 documentation that's needed to really show why the new numbers
12 are valid when we had all sort of agreed to other numbers.
13 And I do understand what has been said about the explanation,
14 but I think there should be much more in terms of detail and
15 how the numbers were arrived at.

16 THE COURT: Why don't you work that out with the
17 monitor?

18 MR. LEVY: Will do.

19 THE COURT: I think it will be useful. I do not
20 want to create work, unnecessary work, but on something like
21 this where we are going from a number like 120,000 to
22 105,000 --

23 MR. LEVY: 125 to 105.

24 THE COURT: Right, 125 to 105, that is a substantial
25 revision. And why that revision is appropriate should be

1 committed to writing, and anything else that has a significant
2 impact on the numbers.

3 Look, if out of 105,000 you can reach your goal of
4 15,000 African-American test-takers, well, that's great. But,
5 how did you get to that concept, that number? That's
6 important, too. There may be good reason, but it should be
7 tested by being placed in writing and discussed. So I will
8 leave it to the monitor to follow up on that with you.

9 So the data.

10 MR. SULLIVAN: Thank you, Your Honor.

11 THE COURT: Mr. Sullivan.

12 MR. SULLIVAN: Yes. Thank you, Your Honor.

13 You wanted to have us discuss a few aspects of the
14 data, and I think ARCS was one of the first areas of interest.
15 I think Mr. Eichenholtz might have touched on some highlights,
16 but let me just not repeat everything he said, but just some
17 highlights.

18 All the data that had been stored in our prior
19 system, which was called RTDS, has been migrated over to the
20 ARCS system. The ARCS system is live now, so we're able to
21 keep track of all the new events and all the EOIs are going to
22 be entered directly into ARCS.

23 Our intention to is use ARCS throughout the campaign
24 to help evaluate how our recruitment efforts are going. And I
25 think Mr. Eichenholtz indicated we plan to develop a formula

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1 to assess the level of interest. And the idea behind that is
2 if we have a candidate who is moderately interested, we'll
3 pursue that candidate more aggressively.

4 We are also going to try to evaluate eligibility.
5 So, for example, if we have candidates who are interested, but
6 might be lacking a driver's license, we'll make efforts to
7 reach out to them to remind them of the importance of
8 obtaining a driver's license.

9 And we started using ARCS exclusively earlier this
10 month, I think it was September 1st that it went live.
11 Certain of our recruiters have tablets to help them enter data
12 directly into the tablets and it goes into the ARCS system
13 that way.

14 THE COURT: Is the data available to the parties?

15 MR. SULLIVAN: I'll check on the timeliness of how
16 we transmit it, yes. I don't know offhand.

17 THE COURT: I mean it would seem to me that if not
18 on a rolling basis, that certain types of data that have an
19 impact on your success with regard to the process of
20 recruiting new minority firefighters should be available to
21 the parties so they can see what is going on. And, perhaps,
22 that is something that you should work on so that they do not
23 get everything necessarily, but they get what is useful --

24 MR. SULLIVAN: Understood.

25 THE COURT: -- to them.

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1 MR. SULLIVAN: And Mr. Eichenholtz reminds of the
2 EOI data that we are able to provide to the parties coming out
3 of the ARCS now. So that is an example.

4 THE COURT: Very good.

5 MR. SULLIVAN: If I may. I wanted to talk to Your
6 Honor about the end-to-end database.

7 THE COURT: Go ahead.

8 MR. SULLIVAN: Thank you.

9 You asked if this would be on time for completion by
10 year end, and I'm happy to report that, yes, it is on target
11 for such completion. The system is going to be ready to
12 accept data for the promotional exam the DOJ mentioned that
13 will be given in December of 2016.

14 THE COURT: So the end-to-end database, it is a
15 tracking device, correct?

16 MR. SULLIVAN: Yes.

17 THE COURT: For a candidate?

18 MR. SULLIVAN: For a -- from expression-of-interest
19 to --

20 THE COURT: All the way to taking the oath?

21 MR. SULLIVAN: Correct.

22 THE COURT: Okay, go ahead.

23 MR. SULLIVAN: Thank you.

24 With the end-to-end database we are going to include
25 some quality control measures, so the system will flag dates

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1 that appear erroneous. For example, if the year is a future
2 year it will not prevent -- it will preclude us from entering
3 that data. The system will not allow the individual to move
4 to another screen unless certain required fields are
5 completed. The system will alert the user if information is
6 inconsistent. So, if, for example, we have a date of birth
7 discrepancy, we'll be able to rectify that rapidly. And the
8 system will let us know if -- I'm sorry -- will allow BHS,
9 that's the Bureau of Health Services, to enter test results.

10 I think Your Honor also wanted some information on
11 the current candidates tracking spreadsheets?

12 THE COURT: Yes.

13 MR. SULLIVAN: Thank you.

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15 (Continued on the following page.)

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1 MR. SULLIVAN: We had produced a candidate tracking
2 spreadsheet late spring, I believe, and we produced a revised
3 one in July of 2016. The revised one, we were able to resolve
4 numerous data issues that had been present in the first one
5 that the parties and the City had discussed.

6 We were also able to include some new data, some of
7 which had been suggested by the parties, such as PRB
8 disqualifications reasons -- PRB being Personnel Review Board,
9 as Your Honor might recall -- the reasons why candidates were
10 referred there, and also candidate claiming credit
11 information, for example, residency credit or veteran status
12 credit.

13 We are going to have a meeting with the parties with
14 proposed dates for the week of 9/26 and I think, if I remember
15 correctly, the meeting closes the 28th or 29th, to go over
16 where we stand with the candidate tracking spreadsheet.

17 We are working on an attrition metrics document that
18 we intend to share with the court monitor. We are close to
19 finalizing that.

20 We have hired a new program evaluation team which
21 consists of five people who have expertise in helping us
22 evaluate the effects of -- excuse me, helping to alleviate
23 the attrition mitigation -- I'm sorry, helping us bolster our
24 mitigation efforts is what I was trying to say. Thank you for
25 your patience.

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1 And that is what I have on those three databases.

2 THE COURT: All right. Thank you. Any comments for
3 the plaintiffs on any of these items?

4 MS. FUNK: Not for the United States.

5 MS. COOK-MACK: Can I take a quick minute to say
6 that we are really pleased with the direction the department
7 is going with the data work. One of the things we understand
8 ARCS will be able to do is provide candidates with their own
9 portal where they can see their own information and hopefully,
10 one day -- although this is sort of more of a discussion and
11 less actual fact -- they will be able to see upcoming
12 appointments or perhaps change them, see what information is
13 needed by the department. We are hopeful that the more robust
14 that is the more that will help us in our efforts to deal with
15 the attrition and to bolster the attrition mitigation efforts
16 of the department.

17 Similarly, the end-to-end database is something that
18 the work is really, I think, sort of moving in a direction
19 where the diversity advocate, for example, can say please show
20 me the candidates who have obtained 30, 32, 33 points towards
21 the 36 points needed for a residency credit, so that the
22 advocate could then proactively work with those folks to make
23 sure that they are not missing a class because they haven't
24 gotten their points proven. And we think that's a really
25 important way that, once again, improving the data will

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1 improve the outcomes for candidates that aren't, you know, in
2 the know and don't understand all of the processes. So we,
3 like Don Sullivan said, have a meeting coming up where we will
4 talking through this more.

5 The last part I would just flag is that we have also
6 been talking about ways in which this end-to-end database can
7 incorporate a more robust set of data points around who and
8 why people are getting referred to the Personnel Review Board
9 for character. And, again, we are very hopeful that that
10 information will be informative to all of our efforts to make
11 sure that that process is as adverse impact-free as possible.
12 We think this effort is really important and we are glad that
13 it is moving forward.

14 THE COURT: Thank you. All right. Yes?

15 MR. COHEN: Your Honor, just on data and also as it
16 pertains to recruitment, I just want to note that we have
17 asked the department to keep track of costs of the current
18 campaign for recruitment, as well as for data so that in the
19 future, when budgeting is done for the next campaign, we will
20 have a sense of what things are costing and I meant to mention
21 that when we were talking about recruitment but also for that
22 as well.

23 THE COURT: Thank you. Good. All right.

24 Let's move on to EEO. Where do we stand on the EEO
25 process?

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1 MR. EICHENHOLTZ: Yes, your Honor. I will start
2 with one of the discussions we had at the last conference is
3 that we talked about the evaluation metric, putting something
4 in the evaluation to rate supervisors on EEO, and if Your
5 Honor recalls, we were in discussions with the union and the
6 Court stated if we didn't have something by the end of August
7 Your Honor would take action and I am pleased to announce that
8 we do have a EEO metric that is going to be implemented and we
9 do have a union agreement for that.

10 The one thing the department is -- the department's
11 in the process of needing to implement it. We, you know,
12 expect to have an implementation schedule shortly, but the key
13 piece to that is to make sure that all of the supervisors are
14 properly trained because obviously from the union's
15 perspective, you know, they're saying if you want to rate them
16 on it, you got to train them on it. We've been working with
17 the monitoring parties on the officer training. We actually
18 have and will be distributing to them very shortly the revised
19 incorporating monitoring and the parties' comments, the
20 training modules. Hopefully we will get that in place, having
21 the officers trained and start rating them. So that is done.
22 We are on to implementation of that.

23 There's only one vacancy I remaining. And the only
24 reason that there is a vacancy in the EEO office staffing is
25 because they had extended an offer to a candidate from the

1 private sector and rejected that offer, so now they are
2 looking for another candidate.

3 The EEO officer is also ready to implement an EEO
4 counselor program. Those positions have been posted and the
5 fire department is going to be reviewing applications. There
6 are going to be 20 fire and 10 EMS EEO Counselors. Training
7 would occur this winter, positions would begin in
8 February 2017. And the EEO counselors, as Your Honor may
9 recall, are going to have a presence out in the field, which
10 we have discussed many times, both reporting back to the EEO
11 officer and being a resource out there to people. There has
12 been green lighted; it is underway.

13 We also have the EEO policy and the EEO
14 investigative manual, which we have been working very
15 diligently with the monitor and the parties to draft, revise,
16 make revisions to the revisions. We have had several meetings
17 over substantive issues. I think we are down to one issue
18 that the Vulcan Society would like a change and we are trying
19 to see if we can reach some compromise for that, which we have
20 not done that. We are hoping to have that all squared away.

21 THE COURT: When?

22 MR. EICHENHOLTZ: Again, if that dispute didn't
23 exist, we would do it today.

24 THE COURT: What dispute is this?

25 MR. EICHENHOLTZ: The dispute that we have with the

1 Vulcan Society on this one remaining issue. We had probably
2 two or three meetings where we have hammered out every other
3 issue, this one remains.

4 THE COURT: You have made a lot of progress. I am
5 very pleased about the progress. The progress on officer
6 accountability, the procedure for making EEO complaints
7 initially, and then moving them up in the system and having
8 staff who will be able to receive them. We started off with
9 next to nobody in the EEO office and somebody took away the
10 one car that they had. This is where we started.

11 Now we are doing a lot better; however, the last
12 piece of the puzzle needs to be placed in the jigsaw puzzle
13 and then the whole picture needs to be provided to everyone.

14 In my view, the EEO policy and process and its
15 proper funding and its proper staffing is the most important
16 piece of the ongoing policy of inclusion and diversity in the
17 fire department because it will be there when people have
18 problems to work through the problems. So when you have that
19 last piece of the puzzle, whatever that is that you and the
20 Vulcan Society have not yet resolved, there needs to be a
21 rollout of this whole process in the most public and
22 significant way at the highest level so that the message is
23 received by everyone: People in the fire department, people
24 in the community, potential candidates who are in the
25 community that the world has changed, that minorities are

1 welcomed in the fire department, that there is a process for
2 dealing with disagreements of this type, where they can be
3 resolved, hopefully amicably, appropriately and promptly. But
4 that all has to be done at the highest levels of city
5 government. It is not going to happen in this courtroom. I
6 am not going to put my stamp of approval on it and then it is
7 like there. It is there when people understand it is there,
8 they accept it, and they are prepared to implement it, and it
9 gets implemented it, and the people who are doing the work in
10 EEO know that they have the support of at the highest levels
11 and they can go do their jobs.

12 So what I am saying to you is let's get this last
13 piece of the puzzle worked out. It has been a long time in
14 coming, but there has to be a rollout of this policy at the
15 highest level of the city government for it to have any chance
16 of being highly successful.

17 MR. EICHENHOLTZ: Yes, your Honor.

18 THE COURT: I am just telling you that.

19 MR. EICHENHOLTZ: Yes.

20 THE COURT: There is a lot that goes on that is a
21 question of perception. If the perception is that this has
22 got to work, then it is going to work. If the perception is
23 that this is just a policy that is going to gather dust on a
24 shelf somewhere, then it is not going to work. That is my
25 message to you and the people you work for.

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1 MR. EICHENHOLTZ: Yes, your Honor.

2 THE COURT: And the people you work for work for.

3 MR. EICHENHOLTZ: Yes.

4 THE COURT: Got the picture?

5 MR. EICHENHOLTZ: Understood, Your Honor.

6 THE COURT: Okay. Does anybody else have anything
7 on that?

8 MR. SEXTON: No, Your Honor, just that we are
9 pleased to see the progress as well.

10 THE COURT: Okay. Then we can move along.

11 Have we covered character review issues yet on
12 recent revisions to the city policy, training, and the PRB
13 data, plans from analysis? We can do that briefly.

14 MR. EICHENHOLTZ: Yes, your Honor. Very briefly.
15 So as Your Honor probably recalls from the last conference
16 being brought back, or we invited back the people who have
17 been previously rejected by PRB for reconsideration under the
18 new policy. The new policy has been implemented effective
19 July. There were two sessions, for a total of seven hours, on
20 the new policy in the referral criteria conducted by Professor
21 Rick Rossein, who has been working with us on those issues.
22 In July and in August, two one-hour sessions on understanding
23 case assessment and other forms that we worked with the
24 parties on changing and some reference guides for the referral
25 criteria were created.

1 Just in summary, the changes are that there are
2 limited look-back periods for arrests that did not lead to
3 convictions, two or more misdemeanor arrests within the
4 look-back period rather than one, and there has been
5 clarification on the limited referral employment history and
6 school basically so fewer people will be referred to the PRB
7 in the first place. So we are now in the training.

8 The PRB members are being trained this month and
9 then the PRB is beginning in October its process of meeting
10 and considering candidates for the October 2016 -- in
11 October 2016 for the December 2016 class.

12 THE COURT: One other question on the EEO
13 implementation. Do you have a timetable for officer training
14 under the new policy?

15 MR. EICHENHOLTZ: I don't have it offhand. I can
16 certainly provide it to the monitor, Your Honor.

17 THE COURT: Why don't you do that so I have it too.
18 Thank you.

19 Anything else on that subject? All right.

20 In terms of the cadet program and Explorer program.

21 MR. COHEN: Just going back to the PRB, if I might.
22 Just very quickly, I wanted to update the Court, and we have
23 already told the parties, that the monitor is in process of
24 engaging an expert who will be helping us to look at grounds
25 for review to the review board, to the PRB, and we will be

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1 seeking input of the parties and the City and also share in
2 what the expert finds with them.

3 THE COURT: Okay.

4 On the cadet program, we have approval from the
5 State Civil Service Commission?

6 MR. SULLIVAN: Yes, we do.

7 THE COURT: Go ahead.

8 MR. SULLIVAN: Thank you, sir. We have hired an
9 industrial psychologist named David Morris to work with us on
10 this program, and DCAS has formally approved his title and
11 added it to the payroll. We wanted to give you a timeline of
12 upcoming rejections first. So, now through October of this
13 year we are going to designate a selection panel, which will
14 include an academy director. CEIO will also be part of the
15 panel. That is the diversity inclusion officer. There will
16 be an assistant commissioner of human resources for a designee
17 and also an assistant commissioner of EEO for a designee.
18 That will be the selection panel. They will define the
19 selection criteria and begin developing what will be the
20 physical training.

21 From December to October of this year, we will
22 select the academy director. Posting is going to close on
23 September 21st.

24 We will also select the academy administrator for
25 civilians. That position recently closed yesterday. We will

1 develop the selection for the candidates. We will begin
2 developing a recruitment campaign and we will complete the
3 physical training program outline.

4 Starting in December and going through until April
5 of 2017 we are going to develop task and standards for the
6 cadet title. We are going to complete a rating scale for the
7 candidates. We are going to develop cadet investigation and
8 medical and psychiatric exam processes and we are going to
9 finalize what will be the curriculum.

10 Starting in April and continuing through June will
11 be the application process. We will also review the selected
12 candidates and we will also hire instructors and mentors.

13 Finally, in the summer of 2017, we will match the
14 mentors with the mentees and we will provide cadets intended
15 work assignments.

16 In September 2017, we expect to have the inaugural
17 cadet class.

18 THE COURT: Okay.

19 MR. SULLIVAN: I could continue and talk about the
20 expansion of the EMS Explorer's program if you would like me
21 to. I don't know if you want to give the others an
22 opportunity to comment.

23 THE COURT: Is there anything in particular and
24 salient that has happened recently on that?

25 MR. SULLIVAN: On the Explorer's program?

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1 THE COURT: Yes.

2 MR. SULLIVAN: We have tentatively selected some
3 schools to expand it. We have focused on neighborhoods that
4 the FDNY does not have postings. We have selected a high
5 school in the Bronx and a high school in Queens. We have
6 posted staffing for mentors. That was posted in a
7 departmental order on September 14th. Prior to being posted,
8 it had been shared with the Affinity groups, including the
9 Vulcans Society. The application period for that ends at the
10 end of this month and we are looking for ten mentors for that
11 program.

12 THE COURT: Thank you.

13 MR. SULLIVAN: Thank you.

14 THE COURT: And then on the new written exam, I take
15 it that the process of preparing and validating the exam is
16 underway for the -- not the promotional exam, well, that too,
17 but who is handling that for the firefighters.

18 MR. RUBINSTEIN: We are very much making significant
19 progress working with the monitors and with the parties and I
20 think we are on track in terms of timetables that were set.
21 There is one issue that I wanted to flag that came up during
22 the last exam, and that was the issue of the test validation
23 board. If Your Honor recalls, that was the board for
24 candidates who object to the scores, or as to how their exam
25 is scored. As Your Honor recalls, there was an order in

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1 February of 2012 on two issues: One was the composition of
2 the board. Issue number two was shortening the period for
3 objections. We made an application to Your Honor. Excuse me.
4 So I think the same issue, or the same application we intend
5 to make for this exam. Like I said, I just wanted to flag
6 this because, again, we are making significant progress on the
7 exam. I just wanted to know if Your Honor would prefer a
8 notice of motion like last time or if there is another
9 procedure Your Honor would prefer instead?

10 THE COURT: What I prefer is if you would discuss it
11 with the monitor and the monitor cue it up for me. I don't
12 need a formal process other than to have the monitor provide
13 the Court with what is proposed and has been discussed with
14 the parties, how the parties feel about it, what your concerns
15 are and what the monitor's recommendation is.

16 MR. COHEN: We will do that, Your Honor.

17 THE COURT: That way I will get everything
18 centralized with the monitor. It is much more efficient for
19 me if I have everything in one place without motion practice.
20 We don't need motion practice. I have enough motion practice.

21 MR. RUBINSTEIN: Understood, Your Honor. Thank you.

22 THE COURT: All right. And I think the only item --
23 well, I have an item that I am going to add. The only other
24 item on the agenda is the priority hire issues.

25 Who would like to speak to priority hire issues?

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1 MS. SWEDISH: I will, Your Honor.

2 We just wanted to give you and update on priority
3 hire status claimants in this case. As you may recall, 435
4 were deemed eligible by Your Honor to proceed with processing.
5 At this time, 160 have been appointed, firefighters. There
6 are 133 who are currently active firefighters, and we have a
7 crop of 96 current priority hire claimants who are eligible to
8 be appointed. The vast majority of that group is undergoing
9 retesting as part of the efforts that I think have already
10 been discussed related to remedy disparate impact found in the
11 medical exam and in the character review process. So we have,
12 I believe, 26 priority hire claimants who are pursuing medical
13 retesting and 34 who are pursuing character reconsideration
14 through those processes.

15 THE COURT: When you say medical retesting, is that
16 including the stair mill exam?

17 MS. SWEDISH: That is correct. We are undergoing
18 efforts and hope to have these candidates appointed to the
19 December 2016 class, but there is the June 2017 class if these
20 efforts need to bleed over into the following class.

21 THE COURT: It is important to move as expeditiously
22 as possible because the priority hires already have a
23 disadvantage in the fact that they are much older.

24 MS. SWEDISH: Absolutely.

25 THE COURT: So whatever can be done to move the

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1 process of retesting with dispatch would be appreciated.

2 MS. SWEDISH: I should clarify, that is the process
3 that we are aware of right now. They are being considered for
4 the December 2016 class.

5 THE COURT: That's wonderful. Good. Thank you for
6 your efforts. I thank the City for its efforts.

7 MR. EICHENHOLTZ: Thank you, Your Honor.

8 THE COURT: I didn't go into the details of the
9 stair mill test because you all have been through it. I know
10 there are areas of concern on the part of the Federal
11 Government and the City, but I don't know that there is
12 anything from me to do at this point, but I'm sure you will
13 inform me if you think there is. I'm not an expert in the
14 subject and I don't intend to become one and I think you ought
15 to rely on your experts and try to work out whatever the
16 solution is without any help from me. But if there is
17 something that you think I can be helpful with, I'm certainly
18 available.

19 Do you have anything for today on that?

20 MR. EICHENHOLTZ: No, Your Honor.

21 MS. SWEDISH: No, Your Honor.

22 MR. LEVY: No, Your Honor.

23 THE COURT: I have one additional question and that
24 is in terms of the deployment of new probie firefighters once
25 they leave the academy, and my concern is that, and I

1 appreciate an article that I read, I think it was the Daily
2 News, about Captain Washington's firehouse and the fact that
3 there are a good number of minority firefighters in that
4 firehouse. My concern is -- and I'm not saying this is where
5 we are going and I hope it's not where we are going -- where
6 we have firehouses that are primarily one thing or another
7 thing, in other words, primarily minority or primarily white,
8 that there is a fair distribution of new firefighters
9 throughout the system so that it is an integrated system, that
10 it is not separate but equal.

11 My view is, just as the Supreme Court's view in the
12 United States, that the best way to assure diversity,
13 inclusion and respect for one another is if you have a range
14 of people in these places of different backgrounds and
15 different races, so forth, so that people can learn, live and
16 work well each other. Notwithstanding that particular
17 situation, I want your assurances, the City's assurances that
18 when firefighters are assigned to firehouses there is no
19 conscious effort on the part of either the City or the
20 receiving fire company to have people of a certain background
21 in the firehouse. And I do understand that a fire officer can
22 request to have a certain probie assigned to his firehouse,
23 but I wouldn't want that to turn into a discriminatory outcome
24 for the City of New York over the next ten years.

25 Do you have anything to say about that?

1 MR. EICHENHOLTZ: Other than, Your Honor, we
2 obviously share that view. I certainly don't have the numbers
3 in front of me. But that certainly has not been the case. I
4 remember Your Honor raised a very similar concern when we were
5 discussing the intent settlement and the Vulcan Society
6 requested a provision about people being -- you know, priority
7 be given to going to a firehouse in a community that someone
8 was from, that that might happen. I remember we were
9 obviously looking at it at that time. I do not believe it is
10 happening. What I will do, to give the Court the reassurance
11 the Court is seeking, is I will circle back with the Fire
12 Department, ask them to take a look at those numbers and make
13 sure that they see that's not happening.

14 As Your Honor points out, it is theoretically
15 possible because individual officers in a house may request
16 certain people, that that might be a result of it, but it is
17 something I believe we have been making sure it is not
18 happening. Again, I will go back and ask for the big picture,
19 to be reassured that that is not happening.

20 THE COURT: And I think it is basically an
21 administrative matter for the department to deal with
22 administratively. I just make special note of it because I
23 wouldn't want to go down the road and see a problem might be
24 developing on a city-wide basis where you would have
25 firehouses that were primarily of one race or one ethnic

1 background and to the exclusion of others.

2 Th other thing is that as more minorities enter the
3 workforce as firefighters, it is less likely to happen that
4 there would be the creation of these circumstances. I just
5 point it out. It is just a reminder and I want to make sure
6 that the benefit of this settlement and the remedial order is
7 that we develop a workforce that is well diversified and
8 integrated throughout the City.

9 MR. EICHENHOLTZ: Yes, your Honor.

10 MR. LEVY: Can I just make a brief comment?

11 THE COURT: Yes.

12 MR. LEVY: I just want to be sure that what you're
13 saying, which we completely agree with, actually doesn't
14 inhibit something that the Vulcans had talked a lot in early
15 phases of the case, and that is that there is a recruitment
16 advantage, sort of an outreach advantage of having at least
17 some firefighters who share identity with the community that
18 they are working in because it is an attractant to the people
19 in that community to let them know that they can be in the
20 house and that folks are there of the same background.

21 THE COURT: I agree with you wholeheartedly. My
22 comments are not meant to discourage that in any way. My
23 comments are meant to avoid a situation where within the fire
24 department -- let me be blunt about it. Within the fire
25 department you can shunt off minorities to some firehouses and

1 have other firehouses that are overwhelmingly white.

2 I have gone through a lot in this case, Mr. Levy, as
3 has everyone, and I am not here to allow that to happen. So
4 the message is, to everybody, that this is not intended to
5 create a Tale of Two Cities, that this is intended to create a
6 diverse workforce where people work well together, regardless
7 of race and ethnic background, and that, as in other
8 departments of the city government, we have that good working
9 relationship among the workforce, irrespective of race and
10 irrespective of ethnic background. That is the purpose. I am
11 not sitting there and watching every workplace in the New York
12 City Fire Department. I am relying on the people who run the
13 fire department to do what needs to be done to achieve that
14 objective. One piece of it is the exam and the process for
15 sending people to the academy and the academy. All of this is
16 part of it. But in the end, if we end up with something that
17 would be inappropriate, that would create great sadness, and I
18 just don't want that to happen. I am telling you that here
19 and now. I don't want to be down the road in three years and
20 see something that is really what was never intended but the
21 people on the scene have been busy orchestrating it.

22 There are people who I assume, based on what I have
23 heard and seen and have been told in this courtroom, hundreds
24 of them, who might be capable of orchestrating it. I wasn't
25 born yesterday. I have a decent IQ and I have experience. I

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1 have lived in New York City my entire growing up and adult
2 life. I am just sending the message. I assume it has already
3 been received, but I just want to reiterate. I hope for
4 everyone's good faith. But if people don't exercise good
5 faith, then there will be consequences as a result. That is
6 all.

7 MR. LEVY: We appreciate that, Your Honor.

8 THE COURT: Anything else for today?

9 MS. SWEDISH: I raised one issue at the June status
10 conference that I wanted to update Your Honor on. We have
11 been working collaboratively with the City on some issues
12 related to the implementation of retroactive seniority awards
13 as part of Your Honor's Final Relief Order. We are still in
14 the process of working those out. If there are any issues
15 that we cannot resolve on our own, we will certainly let you
16 know.

17 THE COURT: Thank you. I appreciate that.

18 (Continued on following page.)
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1 MS. COOK-MACK: I just wanted to flag for the Court
2 one issue that's arisen as we've talked through the
3 implementation of the cadet program, and that is the
4 scheduling of the promotional exams. And you have to be a
5 cadet to take the promotional exam, and the next promotional
6 exam is being offered before they come into the job. And so
7 we have begun discussions, and I think it was very fruitful,
8 about whether there will need to be another exam scheduled in
9 the two years that the cadets are in the position. And, if
10 so, does that raise questions about the availability of tests.
11 How does that play out in terms of the test development
12 conversation, and does it have any impact going forward on the
13 open competitive exam? If the promo becomes every two years,
14 does there need to be rethinking around the open competitive?

15 And I just wanted to flag that for you. We're
16 discussing it and trying to figure that out, but it's sort of
17 an issue.

18 THE COURT: Good, and if you have any problems, let
19 Mr. Cohen know, he will let me know, and we will take it from
20 there.

21 I also would like to thank you all working so well
22 with the court monitor, and I think it has worked quite nicely
23 in terms of moving us forward on the different fronts that we
24 have. And it is a complicated case, there is no question
25 about it, technologically and also in terms of the meeting

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1 some of the social objectives and legal objectives that we
2 have in this case.

3 I would like to set a new status conference for
4 December 15th. It is a Thursday at 2 p.m. Can you all make
5 it?

6 MS. SWEDISH: I believe that we have set a meeting
7 among the parties and the monitor's team for recruitment
8 efforts for that day, but I imagine we can change that meeting
9 to accommodate Your Honor's schedule, of course.

10 THE COURT: Well, why don't you have that the day
11 before, that way you will have something to report maybe.

12 All right, it is Thursday, December 15th at 2 p.m.

13 Anything else for today?

14 Thank you very much.

15 ALL COUNSEL: Thank you, Your Honor.

16 THE COURT: Thank you very much.

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18 (Matter adjourned to December 15, 2016 at 2:00 p.m.)

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